

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

DONALD J. BELL

Plaintiff,

VS.

DALLAS COUNTY, TEXAS,
ET AL.

Defendants.

§
§
§
§
§
§
§
§
§

NO. 3-10-CV-0554-P

**FINDINGS AND RECOMMENDATION OF THE
UNITED STATES MAGISTRATE JUDGE**

This case has been referred to the United States magistrate judge for initial screening pursuant to 28 U.S.C. § 636(b) and a standing order of reference from the district court. The findings and recommendation of the magistrate judge are as follow:

I.

This is a *pro se* civil action brought by Donald J. Bell against Dallas County and two psychiatrists who participated in a competency hearing that resulted in his commitment to a state mental hospital. On March 19, 2010, plaintiff tendered a complaint to the district clerk and filed an application to proceed *in forma pauperis*. Because the information provided by plaintiff in his pauper's affidavit indicates that he lacks the funds necessary to prosecute this case, the court granted leave to proceed *in forma pauperis* and allowed the complaint to be filed. Written interrogatories then were sent to plaintiff in order to obtain additional information about the factual basis of his suit. Plaintiff answered the interrogatories on March 31, 2010. The court now determines that this case should be summarily dismissed for lack of subject matter jurisdiction.

II.

Unless otherwise provided by statute, federal district courts have jurisdiction over: (1) federal questions arising under the Constitution, laws, or treaties of the United States; and (2) civil actions between citizens of different states or foreign nations where the amount in controversy exceeds \$75,000, exclusive of interest and costs. *See* 28 U.S.C. §§ 1331 & 1332(a). A party seeking to invoke the jurisdiction of a federal court must prove that jurisdiction is proper. *See Boudreau v. United States*, 53 F.3d 81, 82 (5th Cir. 1995), *cert. denied*, 116 S.Ct. 771 (1996).

Plaintiff does not attempt to state a claim arising under federal law. Instead, his only claim against defendants is for violations of section 574.011(a) of the Texas Health and Safety Code. (*See* Mag. J. Interrog. #1(a)). Nor is there a basis for federal diversity jurisdiction. It is apparent from the face of the complaint and interrogatory answers that plaintiff and defendants are citizens of Texas. (*See* Mag. J. Interrog. #7). Thus, there is not complete diversity between the parties. *See Owen Equipment & Erection Co. v. Kroger*, 437 U.S. 365, 373-74, 98 S.Ct. 2396, 2402-03, 57 L.Ed.2d 274 (1978) (in order for a federal court to exercise diversity jurisdiction, the citizenship of *all* plaintiffs must be different from the citizenship of *all* defendants).

RECOMMENDATION

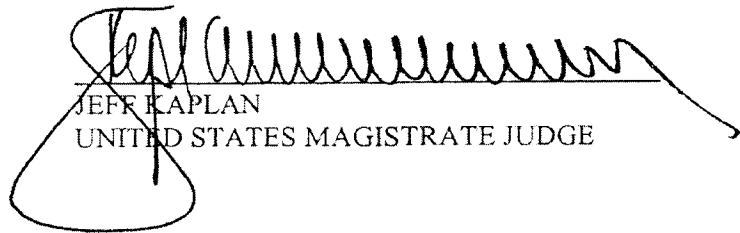
Plaintiff's complaint should be summarily dismissed without prejudice for lack of subject matter jurisdiction.¹

A copy of this report and recommendation shall be served on all parties in the manner provided by law. Any party who objects to any part of this report and recommendation must file

¹ Even if the court had subject matter jurisdiction to hear this case, plaintiff's claims, which arise out of a competency hearing held on November 18, 2003, are likely barred by limitations. *See Ali v. Higgs*, 892 F.2d 438, 439 (5th Cir. 1990) (federal civil rights actions and other claims involving personal injury are governed by a two-year statute of limitations).

specific written objections within 14 days after being served with a copy. *See* 28 U.S.C. § 636(b)(1); FED. R. CIV. P. 72(b). In order to be specific, an objection must identify the specific finding or recommendation to which objection is made, state the basis for the objection, and specify the place in the magistrate judge's report and recommendation where the disputed determination is found. An objection that merely incorporates by reference or refers to the briefing before the magistrate judge is not specific. Failure to file specific written objections will bar the aggrieved party from appealing the factual findings and legal conclusions of the magistrate judge that are accepted or adopted by the district court, except upon grounds of plain error. *See Douglass v. United Services Automobile Ass'n*, 79 F.3d 1415, 1417 (5th Cir. 1996).

DATED: April 2, 2010.



JEFF KAPLAN
UNITED STATES MAGISTRATE JUDGE